

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
No. 7:24-CV-409-FL**

PHILIP ROESEL,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES;  
XAVIER BECERRA in his official  
capacity as Secretary of the United States  
Department of Health and Human  
Services; CENTERS FOR MEDICARE &  
MEDICAID SERVICES; CHIQUITA  
BROOKS-LASURE, in her official  
capacity as the Administrator of the  
Centers for Medicare & Medicaid  
Services,

Defendants.

**MOTION FOR ENTRY OF DEFAULT  
AS TO ALL DEFENDANTS**

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Plaintiff Philip Roesel (“Roesel” or “Plaintiff”), pursuant to Rule 55(a) of the Federal Rules of Civil Procedure and Local Rule 55.1, hereby applies to the Clerk of Court to enter a default against Defendants the United States Department of Health and Human Services (“HHS”), Xavier Becerra (“Becerra”), in his official capacity as Secretary of HHS, the Centers for Medicare & Medicaid Services (“CMS”), and Chiquita Brooks-LaSure (“Brooks-LaSure”), in her official capacity as the Administrator of CMS (collectively, “Defendants”). In further support of this Application, Roesel shows the Clerk of Court the following:

1. Federal Rule of Civil Procedure 55(a) requires that:

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, *the clerk must enter the party’s default.*

Federal Rule of Civil Procedure 55(a) (emphasis added).

2. Defendants were served with process on May 15, 2024. The returned Proofs of Service for each of the Defendants, which include Affidavits which are expressly incorporated herein by reference, previously have been filed with the Court. (D.E. 8–11.)

3. Pursuant to Federal Rule of Civil Procedure 4(a)(1)(E), the summons served notified the Defendants that “a failure to appear and defend will result in a default judgment against the defendant[s] for the relief demanded in the complaint.” (*See* D.E. 7 (Summonses Issued).) Defendants were thus on notice that, if they elected not to timely respond, Roesel would be entitled to the relief demanded in the Complaint.

4. As reflected in the Affidavits of Service filed with this Court, Defendants were all served in accordance with Federal Rule of Civil Procedure 4(i), which denotes the process for serving “the United States and Its Agencies, Corporations, Officers, or Employees,” including via “registered or certified mail to the civil-process clerk at the United States attorney’s office” and “to the Attorney General of the United States at Washington, D.C.” (*See* D.E. 7-11, Exhibit B to Affidavits of Service.)

5. Pursuant to Federal Rule of Civil Procedure 12(a)(2), Defendants were required to “serve an answer to a complaint, counterclaim, or crossclaim within 60 days after service on the United States attorney.” The United States attorney for the E.D.N.C. was served on May 15, 2024. (D.E. 8–11, Exhibit B to Affidavits of Service.)

6. Sixty days after May 15, 2024, was July 14, 2024, which was a Sunday. When a deadline falls on a Sunday, it is automatically extended to the following business day. Fed. R. Civ. P. 6(a)(1)(C). Consequently, Defendants’ responsive pleadings (or pre-answer Rule 12 motions) were due on July 15, 2024. Fed. R. Civ. P. 12(a)(2).

7. Defendants neither filed with the Court or served Roesel with responsive pleading or Rule 12 motion prior to or on the applicable deadline, nor did they file any motion for extension of time before the July 15, 2024, deadline expired. Indeed, they have still failed to do so.

8. The Court can find further support for this motion, in accord with Local Rule 55.1(a), in the Affidavits of Service which have been filed with this Court and are expressly incorporated herein by reference. (D.E. 8–11.)

WHEREFORE, Plaintiff requests that default should be entered against Defendants pursuant to Federal Rule of Civil Procedure 55(a).

Respectfully submitted, this the 23rd day of July, 2024.

**WOMBLE BOND DICKINSON (US) LLP**

By: /s/ Jesse Schaefer  
Christopher W. Jones  
(N.C. State Bar No. 27265)  
Jesse Schaefer  
(N.C. State Bar No. 44773)  
Brian F. Castro  
(N.C. State Bar No. 53412)  
555 Fayetteville Street, Suite 1100  
Raleigh, North Carolina 27601  
Phone: (919) 755-8173  
Fax: (919) 755-6771  
Email: Chris.Jones@wbd-us.com  
Jesse.Schaefer@wbd-us.com  
Brian.Castro@wbd-us.com

*Counsel for Plaintiff Philip Roesel*

### **CERTIFICATE OF SERVICE**

I hereby certify that on 23 July 2024, the foregoing **Motion for Entry of Default** was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the Defendants' counsel of record as follows:

K. Paige O'Hale K.  
(N.C. State Bar No. 44667)  
Assistant United States Attorney  
Deputy Chief, Civil Division  
Eastern District of North Carolina  
150 Fayetteville Street, Suite 2100  
Raleigh, NC 27601  
Telephone: (919) 856-4870  
Email: paige.ohale@usdoj.gov

*Counsel for Defendants Xavier Becerra in his official capacity of the U.S. Department of Health and Human Services, the U.S. Department of Health and Human Services, Chiquita Brooks-LaSure in her official capacity as Administrator of the Centers for Medicare and Medicaid Services, and the Centers for Medicare and Medicaid Services*

### **WOMBLE BOND DICKINSON (US) LLP**

By: /s/ Jesse Schaefer  
Jesse Schaefer  
(N.C. State Bar No. 44773)

*Counsel for Plaintiff Philip Roesel*